UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

October 2, 2000

Mr. Jay Chung, Director in Sales
OMEGA Cleaning Equipment, Inc.
215-05 Northern Blvd.,
Bayside, NY 11361

re: Hoyt Hydrocarbon dry cleaning machine

Dear Mr. Chung:

The letter is in response to your correspondence dated August 7, 2000 to Mr. Steve Rapp, Chief of the Air Permits program of EPA New England regarding hydrocarbon dry cleaning equipment. Please note that this letter was redirected to the Hazardous Waste program for review and response. In your letter you requested EPA's opinion on the Hoyt Hydrocarbon dry cleaning machine which uses the ExxonMobil chemical DF-2000. Included with your request were several letters from state environmental agencies which addressed regulations for dry cleaning wastes resulting from the use of the DF-2000 solvent in dry cleaning operations, also included was an MSDS sheet for DF-2000. In addition, you also requested guidance regarding hydrocarbon waste disposal requirements and the applicability of the Massachusetts hazardous waste regulations to certain wastes from the dry cleaning process. Please note that the State of Massachusetts, in accordance with Section 3006 of the Resource Conservation and Recovery Act (RCRA), is authorized to administer and enforce the base RCRA program in lieu of the federal program. In particular, Massachusetts has regulatory authority regarding solid and hazardous waste determinations and waste disposal requirements. Therefore, we suggest that you further consult with the Massachusetts Department of Environmental Protection (MADEP) regarding applicable state regulations for waste disposal and any other applicable hazardous waste regulations.

While we are not in a position to provide you with an opinion on the Hoyt machine we can provide you with some guidance regarding Federal environmental regulations for hazardous waste and potentially applicable regulations for air pollutants with respect to dry cleaning operations. The Federal hazardous waste regulations are found at 40 CFR Part 260 through 279. 40 CFR Part 262 lists the requirements for hazardous waste generators. The generator of a waste is responsible for determining whether the waste is hazardous (see 40 CFR 262.11). There are two ways that a waste is determined to be hazardous; either the waste exhibits a characteristic of a hazardous waste as defined in 40 CFR 261.21, 261.22, 261.23, and 261.24, or it is identified and

specifically listed as a hazardous waste in 40 CFR 261.31, 261.32, and 261.33. Please note that the levels of chemicals listed on an MSDS are not appropriate values to use when making a hazardous waste determination. An MSDS only reports the presence of a hazardous constituent at a concentration level of 1% (the equivalent of 10,000 ppm) or greater. This level is well above any maximum concentration level that could cause a waste to be hazardous due to a characteristic (see 40 CFR § 261.24) using the Toxicity Characteristic Leaching Procedure (TCLP). Therefore, it is unlikely that a generator could rely on knowledge to determine whether or not this product is a hazardous waste after use. Since it is the generator's responsibility to determine whether or not a waste they produce is hazardous, we recommend that testing be done by the generator, in this case the dry cleaning operator, to determine the presence of constituents which may cause the waste to be hazardous.

Under the Air Program EPA promulgated National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for perchloroethylene drycleaners on September 22, 1993. EPA has also listed drycleaning (petroleum solvent) for regulation on its source category list and may develop regulations for major sources of hazardous air pollutants (HAPs). Enclosed please find a fact sheet that summarizes the regulations for hydrocarbon drycleaners developed by EPA. In addition, you can find other useful information about hydrocarbon drycleaners on EPA's website at http://www.epa.gov/dfe/garment/garment.html. We also recommend that you consult with the MADEP regarding any applicable state air permit regulations.

If you have any questions regarding this response, please do not hesitate to contact Sharon Leitch, in the Hazardous Waste Program Unit, at (617)918-1647.

Sincerely,

Craig R. Cooksee

for Edward K. McSweeney, Associate Director
Waste Policy

cc: G. Gosbee, Chief, Hazardous Waste Program Unit, EPA
K. Rota, Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
S. Rapp, Chief, Air Permits Program, EPA
D. Koopman, Air Technical Unit, EPA
J. Miller, Chief, Waste Branch, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Chief, Waste Management, RIDEM
S. Ladner, Supervisor, Licensing Unit, MEDEP
P. Marshall, Chief, Hazardous Materials Management Division, VTDEC

enclosure

United States
Environmental Protection
Agency

Pollution Prevention
and Toxics (7406)

EPA 744-F-99-005
May 1999

Design for the Environment
Garment and Textile Care Program **Fact Sheet**

What is Design for the Environment?

EPA's Design for the Environment (DfE) Program is a voluntary initiative that forges partnerships with various stakeholder groups in an effort to:

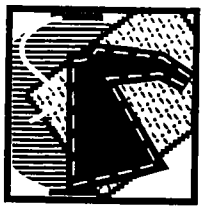
- Incorporate environmental concerns into the traditional decision-making parameters of the business world: 'cost' and 'performance.'
- Build incentives for behavior change to encourage continuous environmental improvement.

To accomplish these goals, the program utilizes EPA expertise and leadership to compare the relative environmental and human health risks, performance, and cost tradeoffs of traditional and newer technologies. DfE disseminates information on its work to all interested parties and also assists businesses to implement the new technologies identified through the program.

The program currently has cooperative partnerships with:

- Industry
- Academia
- Environmental and Public Interest Groups
- Labor Unions
- Research Organizations
- Government Purchasing Agencies
- Professional Institutions and Trade Associations

List of Major Federal Regulations and Standards Affecting Petroleum Cleaners



In general, on a nationwide basis, petroleum drycleaners provide their services primarily to large industrial, commercial, and institutional customers. Consequently, petroleum drycleaning establishments tend to be larger operations relative to the drycleaners who cater to a residential clientele, i.e., the neighborhood cleaners. However, many smaller cleaners are now converting from perchloroethylene to petroleum processes. Because petroleum drycleaners presently form a distinct sector (due to size, customer-type, and solvent-type) within the garment and textile care industry, these operations are subject to special Federal and State regulatory requirements.

This Fact Sheet identifies some of the major Federal environmental, health, and safety requirements that apply to petroleum drycleaning operations. The U.S. Environmental Protection Agency (EPA) administers the Federal environmental protection requirements and the U.S. Occupational Safety and Health Administration (OSHA) administers the Federal worker health and safety requirements. The National Institute of Occupational Safety and Health (NIOSH) has established operational recommendations in the form of guidance documents. NIOSH is a Federal institute that provides research and technical support to OSHA and other Federal agencies. Other Federal Agencies may have regulations that apply to petroleum solvent cleaners and they are not covered in this Fact Sheet.

Compliance with State-Level Requirements. Most States have adopted the Federal regulations and standards into their State-level regulatory codes and are therefore authorized to carry out primary implementation and enforcement responsibilities for the Federal EPA and OSHA requirements. For example, the States responsible for implementing Federal OSHA requirements are called "State Plan States." Beyond the Federal requirements, many State environmental control and public health agencies have adopted regulations and standards that are stricter than the Federal requirements. This document does not address specific State requirements for petroleum drycleaners. Petroleum drycleaners must be knowledgeable of, and in compliance with, the regulations and standards of individual States.

Federal Environmental Protection Regulations and Standards

EPA regulations apply to petroleum drycleaners with respect to: 1) hazardous waste handling and disposal; 2) ozone and volatile organic compound (VOC) air emissions; and 3) spill prevention and control. The EPA regulations outlined below, and related guidance documents, can be accessed on specific EPA web sites as indicated.

DISCLAIMER – This document provides a listing and brief description of only the current MAJOR federal environmental and worker safety regulations that affect petroleum drycleaning operations. It is not intended to be an inclusive listing of every U.S. EPA or U.S. OSHA regulation that may apply to petroleum drycleaning establishments. Further, many States have developed additional regulatory requirements that may apply to petroleum drycleaning operations. Federal and State regulatory requirements may change over time. Petroleum drycleaners must comply with all currently applicable Federal and State regulations and standards. To stay abreast of changes in regulations and standards, and to precisely determine which requirements apply to your specific operation, you should contact your regional EPA and OSHA office (listed at the end of this document) and officials of your state environmental control or public health agency.

Region 8 [Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming]
999 18th Street
Denver Place, Suite 500
Denver, CO 80202-2045
Jill Thomas-Burton, Enforcement/Compliance
(8ENF-T)
(303) 312-6581, fax: (303) 312-6409

Region 9 [Arizona, California, Hawaii, Nevada, American Samoa, Guam]
75 Hawthorne Street
San Francisco, CA 94105
Angela Baranco, Air Division, Compliance Assistance Program
(AIR-6)
(415) 744-1196, fax: (415) 744-1073

Region 10 [Alaska, Idaho, Oregon, Washington]
1200 Sixth Avenue
Seattle, WA 98101
Dan Meyer, Drycleaning Project
(OAQ-107)
(206) 553-4150, fax: (206) 553-0110

OSHA – OSHA officials, located at the Administration's Regional Offices, are available to answer questions pertaining to compliance with worker protection and fire safety requirements. You may contact your regional OSHA office as listed below:

Region 1 [Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont]
JFK Federal Building, Room E340
Boston, MA 02203
(617) 565-9860

Region 2 [New Jersey, New York, Puerto Rico, Virgin Islands]
201 Varick Street, Room 670l
New York, NY 10014
(212) 337-2378

Region 3 [District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia]
Gateway Building, Suite 2100
3535 Market Street
Philadelphia, PA 19104
(215) 596-1201

Region 4 [Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee]
61 Forsyth Steet, SW
Atlanta, GA 30303
(404) 562-2300

Region 5 [Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin]
230 South Dearborn Street, Room 3244
Chicago, IL 60604
(312) 353-2220

Region 6 [Arkansas, Louisiana, New Mexico, Oklahoma, Texas]
525 Griffin Street, Room 602
Dallas, TX
(214) 767-4731

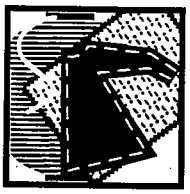
Region 7 [Iowa, Kansas, Missouri, Nebraska]
City Center Square
1100 Main Street, Suite 800
Kansas City, MO 64105
(816) 426-5861

Region 8 [Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming]
1999 Broadway, Suite 1690
Denver, CO 80202-5716
(303) 844-1600

Region 9 [Arizona, California, Guam, Hawaii, Nevada]
71 Stevenson Street, Room 420
San Francisco, CA 94105
(415) 975-4310

Region 10 [Alaska, Idaho, Oregon, Washington]
111 Third Avenue, Suite 715
Seattle, WA 98101-3212
(206) 553-5930

How Can I Get More Information?



Contact EPA's Pollution Prevention Information Center to receive an information packet about EPA's DfE Program, or the Garment and Textile Care Program (GTCP), or to request single copies of DfE documents. A revised DfE Publications List along with these recent GTCP publications are now available:

Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes
(EPA 744-B-98-001)

Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes: SUMMARY
(EPA 744-S-98-001)

Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes: Fact Sheet
(EPA 744-F-98-011)

Frequently Asked Questions About Drycleaning
(EPA 744-K-98-002)

Garment and Textile Care Resource Guide
(EPA 744-K-98-005)

Pollution Prevention Information Clearinghous
U.S. Environmental Protection Agency
401 M Street, SW (7409)
Washington, DC 20460
Phone: (202)260-1023
Fax: (202) 260-4659
Email address: ppic@epa.gov

DfE Garment and Textile Care Program Web Site:
http://www.epa.gov/dfe/garment/garment.html

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

September 18, 2000

David A. Nash, Director
Waste Management Bureau
Engineering and Enforcement Division
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: Algonquin Gas Transmission Company, Cromwell, Connecticut

Dear David:

This is in response to your letter dated August 2, 1999 regarding the absence of secondary containment around an ancillary pipe in which hazardous waste is generated, at the Cromwell, Connecticut facility of the Algonquin Gas Transmission Company. Your letter notes the company's claim that the ancillary pipe is exempt from RCRA requirements due to its regulation under the Pipeline Safety Act. You referred this matter to EPA to determine whether there is such an exemption.

Enclosed please find a Memorandum from our legal counsel determining that the ancillary pipe is not exempt from RCRA requirements. As your letter suggests, this matter has been referred to our RCRA Enforcement Office for followup.

Thank you for your inquiry and for notifying us about this situation. Please feel free to contact me if I can be of any further assistance.

Sincerely,

Edward K McSweeney
Associate Director for Waste Policy

cc: Ken Rota, EPA RCRA Enforcement
Gary Gosbee, Hazardous Waste Program Unit

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

Memorandum

Date: September 18, 2000

Subj: Applicability of RCRA to Hazardous Waste Generated at an Interstate Gas Transmission Pipeline Facility

From: Jeffry Fowley, Associate Regional Counsel for RCRA, EPA Region I

To: Ken Rota, Chief, RCRA Enforcement Unit, EPA Region I
(cc: David Nash, CT DEP; Kevin McSweeney and Gary Gosbee, EPA Region I)

The Algonquin Gas Transmission Company ("Algonquin") operates an interstate gas transmission pipeline that traverses Connecticut and other states. This includes a facility in Cromwell, Connecticut which has notified as a large quantity generator of hazardous waste. Condensate is generated within the main pipeline in association with pipeline compressors at that facility. This condensate first collects within the main pipeline, just upstream of the compressors. This condensate is periodically removed from the main pipeline by opening a valve, allowing the condensate to pass through an ancillary underground pipe into a storage tank. Following storage in that tank, the condensate is removed for off-site disposal. Because of its ignitability and high benzene level, the condensate has been classified as both a D001 and a D018 hazardous waste.

The pipeline facilities including the ancillary pipe are operated under the Pipeline Safety Act, 49 U.S.C. § 60101 et seq. (the "PSA") and United States Department of Transportation ("DOT") regulations promulgated at 49 C.F.R. part 192 pursuant to the PSA. These regulations do not include any requirements for secondary containment. However, secondary containment is required to be installed around storage tank ancillary equipment (such as the ancillary pipe), pursuant to the RCRA regulation at 40 CFR § 265.193(f). That regulation is incorporated by reference for large quantity generators by Section 22a-449(c)-102(a)(1) and (2)(B) of the Connecticut State Hazardous Waste Management Regulations. That same regulation also applies to large quantity generators pursuant to the incorporation by reference in 40 CFR § 262.34(a) (1)(ii) of the federal hazardous waste regulations. As documented by the CT DEP during a 1995 inspection, there is no secondary containment around the ancillary pipe, in apparent violation of that regulation.

In a legal memorandum submitted to the CT DEP dated June 6, 1997, entitled "U.S. Department of Transportation Exclusive Jurisdiction over Natural Gas Pipeline Safety

and Environmental Protection" ("Algonquin Legal Memorandum"), Algonquin argues that the ancillary pipe is exempt from the RCRA secondary containment requirement for the following reasons. First, the state hazardous waste regulations are preempted by 49 U.S.C. § 60104(c) of the PSA which provides that a "state authority may not adopt or continue in force safety standards for interstate pipeline facilities." Second, the federal hazardous waste regulations also are rendered inapplicable by the PSA because Congress indicated in 1968 (when it enacted the provisions currently codified as the PSA) that the PSA should be the sole federal statute governing interstate pipeline "safety" (which Algonquin asserts includes environmental protection) and since "[t]here is no indication that Congress intended to modify the PSA's role as the sole statutory authority for the regulation of pipeline safety by its [subsequent] enactment of RCRA." Algonquin Legal Memorandum at 8. Algonquin asserts that RCRA requirements only begin to apply when the condensate is removed from the pipeline facilities in order to be disposed.

While other RCRA violations at Algonquin's Cromwell facility were resolved by the CT DEP through the issuance of a consent order, the DEP decided not to assert jurisdiction over the ancillary pipe under State law. Rather, by letter dated August 2, 1999, the DEP referred this matter to EPA Region I to resolve whether the EPA has jurisdiction over the ancillary piping "and for followup as you may deem appropriate." The matter was subsequently assigned to me.

For the reasons explained below, it is clear that the EPA does have jurisdiction over the ancillary pipe under RCRA. Indeed, while the EPA's authority is even clearer, I believe that the State also could assert jurisdiction over the pipe because it is administering the federal RCRA program which is applicable to the pipe.

1. The Ancillary Pipe is Subject to RCRA Requirements

The general rule enunciated by the U.S. Supreme Court is that "when two [federal] statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Morton v. Mancari, 417 U.S. 535, 551 (1974). "The cardinal rule is that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible." Posadas v. National City Bank of New York, 296 U.S. 497, 503 (1936). Applying this rule here, it seems clear that both the PSA and RCRA should be determined to be applicable to the ancillary pipe. There is no conflict between the lack of a requirement in the PSA for secondary containment and the RCRA requirement for secondary containment. Algonquin has presented no evidence that installing secondary containment will interfere with safe operations or compliance with DOT standards. Thus there is no obstacle to giving both acts effect.

Algonquin argues that we should instead follow the rule that "a specific statute [PSA] will not be controlled or nullified by a general one [RCRA], regardless of the priority of enactment." Algonquin Legal Memorandum at 8. See Radzanower v. Touche Ross &

Co., 426 U.S. 148, 153 (1976). But this rule only applies when courts are forced to choose which of two contradictory statutes to enforce. "[I]f the statutes do not contradict one another no choice need be made.... At most, ... two statutes may result in promulgation of two sets of guidelines.... Such regulatory overlap is not the same as a situation where two statutes provide mutually exclusive results .... Chemical Manufacturers Association v. EPA, 673 F.2d 507, 512 (D.C. Cir. 1982).

The courts consistently have rejected claims similar to Algonquin's. In Chemical Manufacturers Association, supra, RCRA subtitle D (governing non-hazardous solid wastes) was determined to be applicable to mining wastes notwithstanding that the wastes also were regulated under the Surface Mining Control and Reclamation Act. The court rejected the same arguments now being made by Algonquin that RCRA regulation should be precluded because there was a more specific statute governing the wastes with regulations that already took environmental concerns into account. See id. at 510, 512. Similarly, in Legal Environmental Assistance Foundation, Inc. v. Hodel, 586 F.Supp. 1163 (E.D. Tenn. 1984), mixed radioactive and hazardous wastes from a Department of Energy facility were determined to be subject to RCRA hazardous waste regulation (subtitle C) notwithstanding that the Atomic Energy Act grants the authority to regulate such wastes to the DOE.

Algonquin argues that we should follow the case of State of California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979), in which the court determined that EPA Clean Air Act regulation over certain outer-continental shelf activities was precluded by a more specific statute administered by the Department of the Interior. That statute, however, expressly granted to the Department of the Interior the authority to prescribe regulations "for compliance with ...the Clean Air Act." Id. at 1190. In contrast, there is nothing in the PSA that grants the Department of Transportation the authority to set RCRA requirements in place of EPA. Indeed, Algonquin has not pointed to any DOT regulation or policy document which claims the authority to regulate in place of EPA.

The legislative history of the PSA falls well short of establishing the kind of clear Congressional intent that would be necessary to preclude regulation under RCRA. Algonquin points to a committee report indicating Congressional recognition that safety standards for gas pipelines are highly complicated, and thus should be set by the DOT only after consultation with an expert committee. Algonquin Legal Memorandum at 9. This does not establish, however, that the Congress intended to preclude the EPA from applying its own expertise to regulate the discrete area of hazardous waste. The EPA is not seeking to set the overall safety standards for the pipes, and is not asserting any jurisdiction over the main transmission pipe. Algonquin also points to a statement from the Federal Power Commission submitted to the Congress acknowledging that with respect to pipe safety regulations, the PSA gives the DOT rather than the FPC the final say. Algonquin Legal Memorandum at 10. This statement about FPC vs. DOT regulation has nothing to do with whether the EPA may regulate hazardous waste.

In any event, any doubt which may have existed about whether the Congress intended the PSA to be the sole statutory authority governing environmental protection in connection with interstate gas pipelines has been resolved by the Congress when enacting and amending RCRA. The RCRA statute extensively addresses the extent to which RCRA regulations apply to matters also regulated by other federal statutes. See 42 U.S.C. §§ 6903 (27), 6905, 6921(b)(2)(A), 6921(b)(3). In particular, the Congress determined in 1980 amendments that, pending further study, RCRA regulations would not apply to, "drilling fluids, produced waters and other wastes associated with the exploration, development or production of ... natural gas." 42 U.S.C. § 6921(b)(2)(A) (emphasis added). These wastes were made subject only to other existing regulatory programs. Id. [1] However, the Congress did not similarly exempt from RCRA regulation hazardous wastes (like Algonquin's wastes) generated in connection with the transportation of natural gas. See House Conference Report No. 96-1444, section 7(1), (October 1, 1980) (distinguishing between wastes from exploration, development and production operations being exempted and wastes from transportation and manufacturing operations not being exempted). Thus the EPA has interpreted RCRA as covering "wastes generated by the [natural gas] transportation process ... because they are not intrinsically connected with [exempt] primary field operations." RCRA/Superfund Hotline Monthly Summary, February 1989, item 2.

As pointed out in Chemical Manufacturers Association, supra, "Congress knows how to repeal [regulatory] authority unambiguously." Id. at 513, n. 33. In the absence of Congress unambiguously creating an exemption, there is simply no basis for assuming the existence of an exemption. Where Congress has granted the natural gas industry a limited exemption, there is especially no basis for saying that Congress actually meant to grant a different, broader exemption.

It is not unusual for RCRA to impose requirements on facilities which go beyond those imposed by other federal statutes addressing safety. For example, RCRA requirements for storage of chemicals go beyond those imposed under OSHA. Additional regulation when a substance becomes a waste arises from Congress' concern that market incentives operate less effectively to ensure careful management of wastes than they do for management of products. Additional regulation under RCRA also reflects Congress' command that EPA's hazardous waste regulations must include what is "necessary to protect human health and the environment," see, e.g., 42 U.S.C. § 6923, in contrast to different standards set by Congress under other statutes. E.g., the PSA standard that protection of the environment must be "considered" by DOT along with other factors, when issuing regulations. 49 U.S.C. § 60102(b).

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[1] This exemption has continued since the EPA determined after doing the study required by Congress not to seek to regulate in this area.

2. The RCRA Requirements Which Apply to the Ancillary Pipe Include EPA Authorized State Regulations as well as EPA HSWA Regulations

The federal RCRA program in Connecticut currently consists of two parts. First, the EPA has authorized the State to administer the RCRA program and has authorized particular State regulations as part of that program. These State regulations apply to sources in Connecticut "in lieu of" federal RCRA regulations, pursuant to 42 U.S.C. § 6926(b). These state regulations include large quantity generator requirements including the secondary containment requirements at issue here. In its authorized program the State regulates all "base program" wastes including ignitable (D001) waste such as Algonquin's condensate.

In addition, the EPA directly implements in Connecticut more recent RCRA requirements adopted pursuant to the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Pursuant to 42 U.S.C. § 6926(g), EPA regulations adopted pursuant to HSWA apply directly to Connecticut sources until the State is authorized to carry out particular HSWA provisions. The State of Connecticut has not yet been authorized to carry out the Toxicity Characteristics Rule ("TC Rule"), promulgated at 55 Fed. Reg. 11798 (March 29, 1990). Thus the EPA directly administers the TC Rule in Connecticut. Among other things, the TC Rule specifies that a solid waste will be a hazardous waste (and thus be subject to hazardous waste regulations) when it fails the Toxicity Characteristics Leaching Procedure (" TCLP") test for benzene. Algonquin's condensate has been classified as "characteristic" for benzene (D018). It first became subject to this additional waste code as a result of the TC Rule. The condensate is thus subject to direct EPA regulation under the TC Rule in addition to the base program State regulations. See 55 Fed. Reg. at 11847-11849.

Both the EPA regulations applicable under HSWA and the State base program regulations require the same secondary containment. See page 1 of this Memorandum. The EPA regulations clearly are not preempted by the PSA for the reasons discussed above in section 1 of this Memorandum. Thus Algonquin must comply with the secondary containment requirement whether or not the State regulations also apply.

In the current circumstances, however, I believe that the State regulations also do apply. While Congress indicated in 1968 in adopting 49 U.S.C. § 60104(c) that "safety" regulations based on "State authority" would be preempted by the PSA, it later established in RCRA a program involving federally authorized environmental regulations. There is no indication that the 1968 Congress intended to preempt such federally authorized environmental regulations; indeed, since RCRA subtitle C had not yet been adopted, the specific issue of whether the PSA preempts regulations adopted under RCRA was of course not addressed. In contrast, when adopting and amending RCRA, the Congress subsequently and more specifically addressed the interface between RCRA and other federal statutes. As explained above in part 1 of this Memorandum, the clear intent of Congress was that there be only a limited exemption for the natural gas industry

from RCRA requirements, with no exemption for wastes generated during the transportation of natural gas. The clear intent of Congress also is that the States be authorized to carry out the federal RCRA subtitle C program. See, e.g., 42 U.S.C. § 6902(a)(7). Authorized State regulations must at a minimum be "equivalent" to the federal RCRA regulations, i.e., the federal RCRA regulations serve as a "floor." 42 U.S.C. § 6926(b). It would defeat Congress' overall intent to read the PSA as preempting federal RCRA requirements whenever the EPA approves a State to carry out the RCRA requirements. If the PSA was interpreted as preempting federally authorized State regulations, this would leave gaps in RCRA's coverage and result in applicable State regulations being less stringent than RCRA's federally required floor.

In Legal Environmental Assistance Foundation, Inc. v. Hodel, supra, the court determined that State RCRA regulations were applicable to the defendant Department of Energy's facility notwithstanding DOE's argument that such State regulations were preempted by 42 U.S.C. § 2018 of the Atomic Energy Act. See id. at 1166. I believe that a court would similarly find that State RCRA regulations are not preempted by the PSA.[2]

When referring this matter to the EPA, the CT DEP indicated that it had accepted Algonquin's argument that Connecticut's regulations are preempted. No formal or binding determination was made, however, and the State is free to rethink its position in light of the reasoning set forth above. However, since the EPA's jurisdiction here is even clearer than the State's, I recommend that the EPA retain the lead on this matter and take what action is appropriate.

3. The Absence of Secondary Containment is in Violation of RCRA Requirements

Algonquin argues that even if the State and federal RCRA regulations are not preempted by the PSA, the ancillary pipe is exempt from the RCRA secondary containment requirement by virtue of 40 CFR § 261.4(c). Algonquin Legal Memorandum at 10 - 11. That provision states (in relevant part) that hazardous waste generated in a "product or raw material pipeline" is not subject to regulation "until it exits the unit in which it was generated."

Algonquin argues that the hazardous waste condensate is not "generated" until it enters the storage tank (after going through the ancillary pipe) since "actual separation" of the condensate from the natural gas does not occur until the natural gas is vented from the separation tank. Algonquin Legal Memorandum at 10 - 11. What Algonquin apparently is referring to is that since the condensate enters the ancillary pipe and storage tank under pressure, gas contained within the condensate subsequently is emitted.

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[2] In its Legal Memorandum, Algonquin cites several cases which hold that State safety regulations are preempted by the PSA. However, none of these cases suggests that federally authorized environmental regulations would be preempted.

But the condensate initially accumulates in the main transmission pipe. This is the RCRA exempt unit. When the condensate exits this unit, it becomes subject to RCRA regulation under the terms of 40 CFR § 261.4(c). The fact that additional gas is subsequently emitted from the condensate no more exempts it from RCRA regulation than the fact that emissions occur from solvents exempts them from RCRA regulation. The ancillary pipe is included within the definition of "ancillary equipment" to a hazardous waste storage tank and is regulated under 40 CFR § 265.193(f). See 40 CFR § 260.10, 6th definition.

Finally, the CT DEP has suggested that in light of the alternative design and operating practices employed by Algonquin, it might qualify for a variance from the secondary containment requirement pursuant to 40 CFR § 265.193(g)(1). Unless and until Algonquin applies for and obtains such a variance, however, it is in violation of the requirement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

June 20, 2000

Mr. William Sirull
MADEP Bureau of Waste Prevention
Business Compliance Division
One Winter Street
Boston, MA 02108

re: Request for Regulatory Interpretation on Expended or Unexploded Munitions

Dear Bill:

This letter is in response to your e-mail dated May 10, 2000 regarding your request for a regulatory interpretation from the Hazardous Waste Program Unit of EPA New England regarding the status of expended lead shot under RCRA when it is disposed of. In particular you asked: "if a person excavates the expended or unexploded munitions, is that material a solid waste and assuming it fails TCLP for lead, is it a hazardous waste if disposed of (as opposed to recycling it as scrap metal)?"

Your question results from your review of two letters from EPA which state that the discharge of ball and sport ammunition at shooting ranges does not constitute hazardous waste disposal since the munitions are being used for their intended purpose (September 6, 1988 letter from Sylvia Lowrance, OSW to Jane Magee, INDEM and an undated letter from Julie Belaga, EPA Region 1 to Charles Fox of Candia, NH). EPA has restated this position in an Amicus brief prepared by EPA, HQ for the District Court of the Southern District of New York, submitted on September 29, 1995. In particular, on page 21 of that brief EPA writes: "The discharge of lead shot and target fragments in the normal use of those products at a shooting range does not fall within the regulatory definition of "solid waste" because it does not constitute the "abandonment" of those materials "by being disposed of" pursuant to 40 C.F.R. 261.2(a) & (b)." EPA had stated similar views in a prior August 28, 1992 Amicus Curiae

We appreciate the opportunity to provide you with our input. Should you have any questions regarding our response please do not hesitate to contact Sharon Leitch at (617)918-1647.

Sincerely,

Edward K. McSweeney, Associate Director
Waste Policy

cc: G. Gosbee, Chief, Hazardous Waste Program Unit, EPA
M. Hoagland, Chief, RCRA Corrective Action Unit, EPA
K. Rota, Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
J. Miller, Chief, Waste Branch, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Chief, Waste Management, RIDEM
S. Ladner, Supervisor, Licensing Unit, MEDEP
P. Marshall, Chief, Hazardous Materials Management Division, VTDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

May 10, 2000

Mr. Richard Kaselis
Division of Oil & Hazardous Waste Facilitiies Regulation
Bureau of Remediation & Waste Management
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Pioneer Plastics - Response to Questions

Dear Mr. Kaselis:

I would like to apologize for the delay in responding to your letter of May 24, 1999 in which you had questions regarding how gaseous emissions from the hazardous waste treatment process at Pioneer Plastics would be regulated. Stephen Yee of the Hazardous Waste Program Unit spoke with you in January concerning the questions you raised. At that time, you indicated that you still wanted a written response.

The questions you raised in your letter are as follows: "Are these volatile emissions a hazardous waste if they are in a gaseous state and do not contain any listed waste constituents? Or are the emissions a hazardous waste because they are derived from the hazardous waste treatment process? If the gaseous emissions are a hazardous waste, what requirements and licenses would be required under federal rules?"

It is our understanding from the subsequent clarifications that the process at Pioneer Plastics has changed, and this is discussed later in our response. However, we would like to address your previously listed questions.

In general, volatile gaseous emissions are not regulated under RCRA unless they are from a hazardous waste treatment process or waste is managed in tanks, containers, surface impoundments, and certain miscellaneous units. The gaseous emissions from the treatment process would be subject to the RCRA, 40 CFR Parts 264/265, Subparts BB and CC air emission requirements if the average volatile organic concentration of the hazardous waste at the point of waste origination is 500 parts per million by weight (ppmv) or greater. The performance standards for organic air emissions can be found in 40 CFR §§ 265.1084 to 1088 and §§ 264.1084 to 1087.

In the scenario concerning the neutralization of the corrosive waste, the neutralized waste would not be subject to the RCRA requirements as long as it does not fail for any of the characteristics of hazardous waste or contains any listed waste. The emission from the oxidizer unit when it is treating this material may be subject to your agency's or the Clean Air Act air emission requirements. The residues from the oxidizer may be subject to your agency's solid waste disposal requirements.

EPA is assuming that this testing is done at the distillate weigh tank and is not conducted after the material is placed in storage in the tank system. The air emission requirements may apply to the distillate weigh tank and the storage tanks if the average volatile organic concentration of the hazardous waste at the point of waste origination is 500 parts per million by weight (ppmv) or greater. The facility should have a waste determination procedure that includes the determination of the volatile organic concentration(s) in place to ensure the waste is properly handled and stored prior to being shipped off-site or treated in the boiler.

If you should have any question concerning this correspondence, please contact Stephen Yee of the Hazardous Waste Program Unit at (617) 918-1197.

Sincerely,

Edward K. McSweeney

Edward K. McSweeney, Associate Director
Office of Ecosystem Protection

cc: Gary Gosbee, EPA
Ken Rota, EPA
Matt Hoagland, EPA
Sharon Leitch, EPA
Jim Gaffey, EPA
Jeff Fowley, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 9, 2000

Linda L. Baetz, Program Manager
Hazardous and Medical Waste
U. S. Army Center for Health Promotion and Preventive Medicine
5158 Blackhawk Road
Aberdeen Proving Ground, Maryland 21010-5422

Re: Hazardous Waste Status of Flameless Ration Heaters

Dear Ms. Baetz:

This letter is in response to your correspondence dated March 14, 2000 in which you request input regarding the Army's approach to the management and disposal of unused Flameless Ration Heaters (FRHs). In that correspondence you indicate that the Army does not define unused FRHs as hazardous waste under RCRA and therefore, would dispose of them in accordance with municipal waste disposal practices.

Based on our review of your letter we would not agree that the unused FRHs when disposed of are not hazardous waste. The US EPA has clarified its position that this material is a characteristic hazardous waste for reactivity in a letter dated May 20 ,1999, from Robert Tonetti of the Office of Solid Waste to Peter Levigne at the Headquarters of the U.S. Army Soldier Systems Command. This is due, in part, to the fact that the unused heaters would no longer be used for their intended purpose and that the magnesium contained in the heaters reacts violently with water (40 CFR §261.23(a)(2)). Please note that the EPA New England states are all authorized to administer and enforce the base RCRA program in lieu of the federal program and, in particular, have regulatory authority regarding hazardous waste determinations. Therefore, the Army should consult with appropriate state personnel in each of the individual States regarding specific requirements for the disposal of FRHs in New England.

units, accumulation time and quantity, preparedness and prevention, contingency plan, personnel training, onsite management of waste, air emission requirements, land disposal plan, record keeping, and biennial reporting. A SQG is required to meet many of the preceding requirements and a CESQG usually is not subject to RCRA requirements provided that it meets the criteria of offsite management of the waste. Please note that some states may not recognize CESQG status, and may have more stringent requirements. You should consult with your state environmental agency to find out the differences.

The definitions and the appropriate federal RCRA regulations for the three hazardous waste generator types can be found in EPA's new series of publications i.e., "RCRA in Focus". The issues currently available are Printing (EPA530-K-97-007), Photo Processing (EPA530-K-99- 002), Vehicle Maintenance (EPA530-K-99-004), and Dry Cleaning (EPA530-K-99-005). The general and case specific information in these publications can serve as references and examples for your clients on how to manage their waste. There is a table in each issue which lists RCRA regulatory requirements and check lists for the three types of generators. You can contact the RCRA Hotline, toll-free at (800)424-9346 or TDD (hearing impaired) (800) 553-7672 for the series . It is also available on the Internet at <http://www.epa.gov/epaoswer/hazwaste/id/infocus/index.htm>.

As for the question about being out of compliance because of unknown materials being present during an inspection, EPA can not agree that it is ever legal to store waste marked "unknown." In order to minimize any potential violations, your client (LQG or SQG) should at least comply with the following RCRA regulations. Specifically, the regulation in 40 CFR 262.34 (a)(3) requires that the generator labels or marks the container clearly with the words "Hazardous Waste" while accumulating waste on site, and § 262.34 (c)(1)(ii) requires that the generator marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the container while accumulating waste in a satellite accumulation area . Since the generator status may also determine the length of time (e.g., 90 or 180 days) that the waste can be accumulated on site without a permit or without interim status, the regulation in § 262.34(a)(2) requires that the date accumulation begins is clearly marked for inspection on each container, except in satellite accumulation area where up to 55 gallons of hazardous waste or one quart of acute hazardous waste can be accumulated without time limitation (§ 262.34 (c) (1)). In addition, the generator should check to determine if he needs to comply with subpart I of 40 CFR part 265 on the use and management of containers (§262.34(a)(1)(i) & § 262.34 (d) (2)).

EPA encourages your client to minimize the use of hazardous materials wherever possible, and to implement a chemical hygiene plan. The chemical hygiene plan is designed to address the proper management of hazardous materials and help your client avoid situations where chemicals can not be identified.

Question #2: Another issue that is fairly common is related to the generation of hazardous waste from machinery and/or equipment(i.e.: HPLC machines). We have found this to be a gray area in the regulations. When these types of machines generate hazardous waste, the issue becomes the point of generation of the waste. Is the point of generation the container where the waste is accumulated out of the machine, or is it where that container is emptied into another container? AETS/Onyx usually leaves this decision up to the safety departments of our clients. If they persist in asking , we tell them to go worst case and treat the container connected to the machine as the satellite waste container. We recently received information from a contact at the Massachusetts Department of Environmental Protection (DEP) that the DEP would not consider the container connected to the machine as a satellite container. Reasoning for this is because the attached container is considered part of the machine. Is this the same approach that the EPA would take?

Response : EPA's approach is to treat the container connected to the HPLC machine as a satellite accumulation container, because this container is at or near the point of generation where the waste initially accumulated out of the machine, and is therefore subject to RCRA requirements on marking and labeling (40 CFR 262.34 (c) (1) and § 262.34 (c)(1)(ii)). Nonetheless, if the waste in this container is emptied into another larger container in the same laboratory with compatible waste for consolidation purposes, the "larger" container can also be considered as a satellite container, as long as the larger container is at or near the point of generation, under the control of one of the operators in the laboratory who is generating such waste, and the total amount of the waste in the container does not exceed 55 gallons (or one quart of acutely hazardous waste). If the large container is not at or near the point of generation, it must be marked with the date that the container first received waste and leave the site within 90 or 180 days of receipt depending on the generator status (40 CFR 262.34(a) & §262.34(d)).

Question # 3: The last issue we have is the use of logbooks to document weekly hazardous waste accumulation areas and satellite hazardous waste areas. AETS/Onyx prefers that our client maintain a logbook of these weekly inspections to document that weekly inspections have been done. Again, there is no

regulatory requirement that written documentation of these inspections is necessary. During an inspection, would EPA want to see documentation that these weekly inspections have been performed? If so, what would EPA's reaction be if these logbooks were not available?

Response : Pursuant to 40 CFR 262.34, a LQG or SQG who accumulates hazardous waste in a container must meet the standards in subparts I of 40 CFR part 265 which include weekly inspections for leaks and deterioration (§265.174) in the waste accumulation area . It is helpful to use the logbook or other written document as the proof that the generator has done the weekly inspections, and it is the generator's responsibility to demonstrate that weekly inspections are conducted. As for satellite accumulation areas, because the generator only needs to comply with § 265.171, §265.172, and §265.173 (a), the documentation for weekly inspections is not required.

Since your company serves clients in both Massachusetts and Rhode Island, you should also confer with these states on the above issues. States with authorized RCRA programs may have more stringent requirements.

I hope this letter has addressed your concerns. If you have any further questions, please call Ken Rota at (617) 918-1751 or Jui-Yu Hsieh at (617) 918-1646.

Sincerely,

Edward K. McSweeney

Edward K McSweeney
Associate Director for Waste Policy
Office of Ecosystem Protection

cc: Ken Rota, EPA, OES
Gary Gosbee, EPA, OEP
Matt Hoagland, EPA, OSRR
Jeffry Fowley, EPA, ORC
Bill Sirull, MA DEP
Leo Hellested, RI DEM
Peter Marshall, VT DEC
John Duclos, NH DES
Dave Sattler, CT DEP
Stacy Ladner, ME DEP

12/99 TRS

Richard Finnegan
AETS/Onyx Environmental
398 Cedar Hill Street
Marlboro, MA 01752
August 6, 1999

Ken Rota
EPA-New England Region 1
1 Congress Street Suite 1100
Boston, MA 02114

Ken,

Hi Ken. You introduced yourself at the EPA Conference in Kittery, Maine a couple of weeks ago. I would like to introduce myself. I am a project manager for AETS/Onyx Environmental Services for Boston, Cape Cod, and State of Rhode Island areas. Thank you for your perspective and assistance at the conference. It was very informative.

As you know, there was a limited time period for questions, specifically relating to RCRA requirements for Hazardous Waste. I was approached by a few customers to try and contact your agency regarding some issues that they have. They have some difficulties and would like to have an EPA interpretation of requirements. The following summaries outline some issues they would like some clarification on:

1. We have a client who occasionally has unknown bottles of waste chemicals in gallon size or smaller containers (lab pack quantities). Obviously, a generator should not have any unknown wastes, but occasionally this does occur. AETS/Onyx can assist in identifying these wastes for the client. Our client's main concern is how they can manage these wastes in the interim period between the discovery of the unknown waste and the service to identify the waste material. They are concerned that if ever there was an inspection, that they would be out of compliance because of unknown materials being present. If they placed these unknown bottles of chemicals in their hazardous waste accumulation area with a sign indicating "Unknown Hazardous materials pending analyses", treated and labeled the materials as a RCRA hazardous waste, identified each bottle as an unknown pending analyses, would this be acceptable for compliance with EPA requirements? I understand that there may be some technicalities with this, but it may show good faith on the part of the generator to attempt to comply with RCRA. If you have any suggestions on a better way to handle this type of situation, I am open to any ideas.

2. Another issue that is fairly common is related to the generation of hazardous waste from machinery and/or equipment (i.e.: HPLC machines). We have found this to be a gray area in the regulations. When these types of machines

generate hazardous waste, the issue becomes the point of generation of the waste. Is the point of generation the container where the waste is accumulated out of the machine, or is it where that container is emptied into another container? AETS/Onyx usually leaves this decision up to the safety departments of our clients. If they persist in asking, we tell them to go worst case and treat the container connected to the machine as the satellite waste container. We recently received information from a contact at the Massachusetts Department of Environmental Protection (DEP) that the DEP would not consider the container connected to the machine a satellite container. Reasoning for this is because the attached container is considered part of the machine. Is this the same approach that the EPA would take?

3. The last issue we have is the use of logbooks to document weekly hazardous waste accumulation areas and satellite hazardous waste areas. AETS/Onyx prefers that our clients maintain a logbook of these weekly inspections to document that weekly inspections have been done. Again, there is no regulatory requirement that written documentation of these inspections is necessary. During an inspection, would EPA want to see documentation that these weekly inspections have been performed? If so, what would EPA reaction be if these logbooks were not available?

I apologize for this being a little lengthy, but I wanted to make sure you understand the concerns involved. Thanks in advance for your help and ideas.

Sincerely,

Richard Finnegan

Richard Finnegan
Project Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 11, 2000

Ross Atkinson, Accounts Manager
Poly-Pacific International, Incorporated
8918-18 Street
Edmonton, AB, Canada T6P 1K6

Dear Mr Atkinson:

Thank you for your brochure and accompanying letter that describes your Multicut® Plastic Media Blasting Recycling Program. In your letter you have requested confirmation from me that the RCRA exemption pursuant to 40 C.F.R. § 261.2(e)(1)(i) is applicable to your process. As I discussed during our prior conversation, you should direct your inquiry to the U.S. EPA's Office of Solid Waste in Washington, D.C. for a formal response. I have already stated to you that the spent blasting media would require a hazard determination and, if found to exceed any characteristic levels of toxic constituents, would subject the spent material to the full scope of the hazardous waste regulations at the facility generating this waste. I also made you aware of a situation in the State of Connecticut where a business conducted that same type of operation and is now a candidate for the Superfund Program due to the widespread contamination caused by the contaminants that were contained in the plastic blasting media.

The issue as to whether this material is a legitimate feedstock for recycling purposes is one which EPA Headquarters should address. Your inability to explain whether toxic materials would normally be used in the production of plastic lumber in the absence of hazardous wastes that are currently received as feedstocks by your facility is probably an issue that the Office of Solid Waste should consider in its legitimacy determination of your recycling process.

Sincerely,

Kenneth B. Rota, Chief
RCRA Compliance Unit
EPA-New England Office

cc: Kevin McSweeney, OEP
Gary Gosbee, OEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 27, 2000

Mr. Thomas P. Balf
Nexus Environmental Partners
One Financial Center
Boston, MA 02111

RE: Regulations applicable to hazardous waste generators on college/university campuses

Dear Mr. Balf:

This letter is a reply to your February 4, 2000 and March 1, 2000 e-mails to Lisa Papetti of EPA-New England's Office of Environmental Stewardship requesting interpretations of Resource Conservation and Recovery Act (RCRA) regulations. Your questions specifically relate to the generation and transportation of hazardous waste at a campus location:

Question One

A university that is a large quantity generator (LQG) of hazardous waste has a remote location that is a very small quantity generator of hazardous waste (VSQG). Can the university send RCRA and DOT trained university personnel to the remote facility and transport hazardous waste hazardous waste back to the main accumulation area/LQG?

The federal regulations allow shipments of hazardous waste to entities "authorized to manage hazardous waste" by authorized states. See 40 C.F.R. § 261.5(f)(3)(iii) and (g)(3)(iii).

The State of Vermont is authorized by EPA to implement regulations found at Vermont Regulation Section 7-306(c)(2)(D). This regulation allows a conditionally exempt small quantity generator to ensure delivery of waste to another site in Vermont owned and operated by the same owner and operator as the conditionally exempt small quantity generator that meets the small quantity or large quantity generator standards. Vermont's authorized regulations also allow a conditionally exempt small quantity generator to transport his or her own waste without a permit as long the generator complies with Section 7-306(c)(3).

EPA is currently working with the Massachusetts Department of Environmental Protection (MA DEP) and the New Hampshire Department of Environmental Services (NH DES) to authorize similar regulations in those states.

Question Two

A private entity is conducting activities in a research building located on property that is contiguous with that of a university/LQG and under the same EPA identification number. Can the university send RCRA and DOT trained university staff to the private entity and transport hazardous waste back to the main accumulation area/LQG? Are there different requirements if the building is a non-university building? Are there different requirements if reimbursement is provided for services?

Transportation of hazardous waste throughout a contiguous property is not required to be accompanied by a manifest and 40 C.F.R. § 263 transporter requirements do not apply. The person who identifies themselves as the generator of the waste by use of an EPA identification number also takes responsibility for management of hazardous waste from the time it is generated on-site until it reaches it final destination. This responsibility includes any measures taken to address releases, emergency coordinator duties and training. If a state has issued one EPA identification number to the university and the private entity as a whole, the generator (in this case, the university) remains fully responsible regardless of any business or other agreement made by an entity located on the generator's property.

EPA allows states flexibility in issuance of EPA identification numbers, and some states issue separate numbers to distinct entities at one location. You may want to check with the New England states to clarify the issuance of EPA identification numbers in this scenario. Generators with separate identification numbers are individually responsible for their waste.

If you have any further questions, please contact Lisa Papetti of EPA-New England's Office of Environmental Stewardship at (617) 918-1756.

Sincerely,

Kevin McSweeney

Kevin McSweeney
Associate Director for Waste Policy

cc: K. Rota, EPA-OES
L. Papetti, EPA-OES
G. Gosbee, EPA-OEP
M. Hoagland, EPA-OSRR
J. Fowley, EPA-ORC
J. Miller, MA DEP
J. Duclos, NH DES
D. Sattler, CT DEP
L. Hellested, RI DEM
S. Ladner, ME DEP
P. Marshall, VT DEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 13, 2000

Michael Conway, Vice President
GZA, GeoEnvironmental, Inc.
320 Needham Street
Newton Upper Falls, MA 02464-7769

re: Request for Agency Interpretation on "Area of Contamination" Policy and its Application to TCLP Lead and PCB Soil

Dear Mr. Conway:

The Hazardous Waste Program Unit of EPA New England is in receipt of your letter dated January 20, 2000, in which you request the EPA's interpretation of the "Area of Contamination" (AOC) policy as it applies to the proposed remediation of soils contaminated with lead in excess of the Toxicity Characteristic (TC) level and with polychlorinated biphenals (PCBs). In your letter you propose to treat the lead in the soil through stabilization using the Maectite process and subsequently have the remaining PCB-contaminated soil disposed of under TSCA requirements. Your primary concern is that the Land Disposal Restrictions (LDRs) no longer be applicable to the soil after it has been treated for lead contamination given the limitations of the LDR universal treatment standards for PCB in soil. To support this, you refer to Section VII (B)(9) and footnote 43 on page 28617 of the LDR Phase IV Final Rule which suggests that once the soil is treated in the AOC for the hazardous waste characteristic of toxicity removal of the soil from the AOC would not constitute the generation of hazardous waste.

The purpose of the AOC policy is to allow certain activities within the area to deal with the management of contaminated soils without triggering RCRA requirements and therefore, encourage clean-up. Those activities include consolidation and *in situ* treatment of hazardous waste. For waste that is actively managed (e.g. treated ex situ) within or outside the AOC and then returned to the land RCRA requirements would apply. As indicated in the LDR Phase IV rule, nothing in that rule changes the affect of the AOC policy.

EPA has always considered the act of removing soil from the ground and then treating it in separate units either inside or outside of the AOC as constituting a RCRA activity (treatment). EPA New England has addressed this issue in previous correspondence, see attached letter dated December 22, 1997, to Mr. Peter M. Zuk of the Central Artery/Tunnel Project. In that letter there is a discussion regarding the applicability of RCRA requirements to *in situ* treatment (treatment occurring prior to removal of soil from the ground) and *ex situ* treatment (treatment occurring after removal of soil from the ground). As we indicated in the letter to Mr. Zuk, removal of soil from the ground in order to treat it for a toxicity characteristic is considered a RCRA activity.

In summary, LDRs and other RCRA requirements would apply to an activity that treats a TC soil within the AOC if that soil is removed from the ground prior to treatment.

If you have any questions regarding this or any other issue, please do not hesitate to contact Sharon Leitch, in the Hazardous Waste Program Unit, at (617)918-1647.

Sincerely,

Edward K. McSweeney, Associate Director
Waste Policy

cc: G. Gosbee, Chief, Hazardous Waste Program Unit, EPA (w/o)
M. Hoagland, Chief, RCRA Corrective Action Unit, EPA
K. Rota, Chief RCRA Enforcement Unit, EPA (w/o)
J. Fowley, Atty., ORC-EPA (w/o)
J. Miller, Chief, Waste Branch, MADEP (w/o)
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES (w/o)
D. Sattler, Supervisor, WEED, CTDEP (w/o)
L. Hellested, Chief, Waste Management, RIDEM (w/o)
S. Ladner, Supervisor, Licensing Unit, MEDEP (w/o)
P. Marshall, Chief, Hazardous Materials Management Division, VTDEC (w/o)

enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

December 22, 1997

Peter M. Zuk, Project Director
Massachusetts Highway Department
Central Artery/Tunnel
One South Station
Boston, MA 02110

re: Central Artery/Tunnel (CA/T) Project
Proposed Treatment Process for Toxicity Characteristic (TC) Soil

Dear Mr. Zuk:

The Hazardous Waste Program Unit of EPA-New England is in receipt of your letter dated December 1, 1997, in which you inform EPA of your intention to implement a process to remove and treat TC-lead contaminated soil from the CA/T Project on a project-wide basis. Implementation of the process is based upon the results of pilot studies performed on 250 cubic yards of TC-lead excavate which successfully demonstrated that all of the TC-lead levels were reduced to levels well below the regulatory limit of 5.0 mg/l. In that letter you state that you intend to treat lead-contaminated soil by applying and mixing a liquid reagent with the TC-soil in order to reduce the leachability of metals by crystal mineralization.

As indicated above, the soil contains lead which may be found at levels that would define it as a hazardous Toxicity Characteristic (TC) waste. The TC rule was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and therefore is implemented by EPA in all states until such time that the states become authorized for the rule. The Commonwealth of Massachusetts will be seeking authorization for the TC rule during 1998. The implications of this on your situation would be that if the process is deemed to need a RCRA Part B permit because of the TCLP test, EPA would be the permit issuing authority in states that do not have TC authorization.

In your correspondence two general treatment scenarios are proposed to implement the previously defined treatment process. These scenarios have been interpreted by the environmental consultants to the CA/T project as being exempt from the RCRA permitting process. The scenarios are as follows: Scenario 1- "Treatment of Confirmed TC-Soil In Situ" proposes to apply the liquid reagent to in-situ soil that exceeds or potentially exceeds the regulatory limit for TC-lead. The reagent will be applied to treat the soil in lifts of 18" to 24" deep. As indicated in the letter, the treatment process occurs almost instantaneously upon application of the reagent and, therefore, when the treated soil is excavated it is no longer considered a RCRA hazardous waste. This treatment scenario, as indicated above, is considered to not need a RCRA permit. EPA agrees with this interpretation since no hazardous waste is being generated under this scenario. Additionally, as indicated in the letter the handling and storage of any treated stockpiled-soil will be done in accordance with the November 1993 Compliance Plan approved by DEP within the AOC ("area of contamination"); Scenario 2- "Treatment of TC-Soil in Tanks and/or Containers" proposes to treat the excavated TC-soil within the identified AOC by applying the reagent to the soil as it is being placed in watertight containers. The treated soil will be stored in the same manner as indicated under Scenario 1. As mentioned previously, this treatment scenario as proposed is considered not to need a RCRA permit. EPA, again, agrees with this interpretation, assuming that the requirements discussed below are met. However, since a hazardous waste is being generated certain generator requirements must in any event be met.

The exclusion from permitting which may apply to your process is found in 40 CFR § 264.1, which states that the requirements of Part 264 - Standards for owners and operators of hazardous waste TSDFs, do not apply to:

> A generator accumulating waste on-site in compliance with 40 CFR § 262.34. In connection with such accumulation, the EPA also has determined that permits are not required for generators treating their hazardous wastes in the generators' tanks or containers in conformance with the requirements of § 262.34 and Subparts I or J of Part 265. See 51 Fed. Reg. at 10168 (March 24, 1986), and 40 C.F.R. § 268.7(a)(4).

In order to qualify for this exemption from the permitting requirement, the waste must be treated by the generator and stored for no more than 90 days. In addition, the waste must be treated within tanks or containers as defined in 40 C.F.R. § 260.10. Finally, all parts of your system involved in storing and treating the waste must meet the requirements of 40 C.F.R. § 262.34 and 40 C.F.R. Part 265, Subparts I or J, and

Subparts AA, BB, and CC. In order to be excluded from the permitting requirement, you need to ensure that all of these requirements are met.

Assuming that you do qualify for the exemption from permitting, you must still meet all applicable generator requirements. In removing any soil which is a hazardous waste, you are considered to be generating a hazardous waste, even if it is then rendered non-hazardous by your treatment. The applicable requirements include obtaining an EPA ID number as the generator of a hazardous waste. 40 C.F.R. § 262.12.

In addition, while the treated soil will be non-hazardous if it does not fail the Toxicity Characteristic, it still must meet all applicable land disposal restrictions (LDR). The current LDR treatment standard for lead for this type of waste is 5.0 mg/l TCLP. As a generator treating wastes subject to LDR, you also will be required to develop and follow a written waste analysis plan pursuant to 40 C.F.R. § 268.7(a)(4).

Although an EPA permit will not be required for the treatment process if you meet the requirements stated above, you are reminded that individual state regulations may be both more stringent and broader in scope than the EPA regulations. Therefore, you will need to contact the state for a determination regarding its views on the regulatory status of the treatment process. Since Massachusetts is authorized for the base RCRA program, which includes sections 261, 262, and 264 of 40 CFR, it maintains the authority to make more stringent determinations regarding exclusions.

In summary we believe for reasons previously discussed that an EPA hazardous waste permit will not be required for the above activity under Scenario 2 if you meet the requirements discussed above. However, the Massachusetts Highway Department will be subject to federal generator requirements, including LDR requirements, and also should contact the MADEP to determine if there are provisions that are more stringent or broader in scope than EPA's.

If you have any questions regarding this or any other issue, please do not hesitate to contact Gary Gosbee, Chief, Hazardous Waste Program Unit at (617) 565-3725. You may also contact Sharon Leitch, of his staff, at (617)565-4879.

Sincerely,

Edward K. McSweeney

Edward K. McSweeney, Associate Director
Waste Policy

cc: G. Gosbee, Chief, Hazardous Waste Program Unit, EPA
K. Rota, Acting Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
J. Miller, Chief, Waste Branch, MADEP
J. Carrigan, Compliance Assessment Branch, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
P. Marshall, Chief, Hazardous Materials Management Division, VTDEC

GZA
GeoEnvironmental, Inc.

Engineers and Scientists

January 20, 2000
File No. 00-904

Kevin McSweeney
Associate Director for Hazardous Waste
Office of Ecosystem Protection
USEPA Region 1
One Congress Street
Suite 1100 - CAA
Boston, MA 02114-2023

320 Needham Street
Newton Upper Falls
Massachusetts
02464-1594
617-969-0050
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Re: Request for Agency Interpretation on "Area of Contamination" Policy and its Application to TCLP Lead and PCB Soils

Dear Mr. McSweeney:

The purpose of this letter is to request United States Environmental Protection Agency (EPA) interpretation of existing regulations and policies with respect to the "Area of Contamination" (AOC) policy/concept and its application to a proposed remedial approach for soils containing lead and polychlorinated biphenals (PCBs). I write to you at the suggestion of Raphael Cody of EPA's RCRA Corrective Action Section who I was referred to by Frank Gardner of EPA's Superfund Removal Program.

The subject material is primarily soil and some debris. It is at a former scrap yard. It has been "accumulated" or "consolidated" within the existing area of contamination. Sampling and analyses indicate that the accumulated material (and surrounding unaccumulated material) exhibits lead above 5.0 ppm (by the Toxicity Characteristic Leaching Procedure (TCLP)) and PCBs above 100 ppm. The goal is to cost effectively clear the site to allow future development. The most cost effective approach we have identified is to stabilize the lead by treatment within the area of contamination and then landfill the remaining PCB-containing soils under the purview of the Toxic Substances Control Act (TSCA). Because the universal treatment standard (UTS) for PCBs in soil is 100 ppm, for this approach to be possible, it is necessary for the Land Disposal Restrictions (LDRs) to not apply.

A Subsidiary of GZA GeoEnvironmental Technologies, Inc.

As I read the existing regulations and policies, support for the position that LDRs do not apply may be found in the existing AOC concept as it is disseminated throughout various regulations and policies. One of these regulations/policies which I believe supports our proposed approach is the preamble of the Federal Register/Vol. 63. No. 001/Tuesday May 26, 1998/Rules and Regulations: Part II, Environmental Protection Agency, 40

CFR Parts 148, 261, 266, 268, and 271 Land Disposal Restrictions Phase IV, Final Rule (LDR Phase IV Final Rule).

Specifically, Section VII (B)(9) and footnote 43 on page 28617 of the LDR Phase IV Final Rule suggests that if the TCLP lead characteristic is eliminated by stabilization treatment prior to its removal from the AOC, the subject material has not been "generated" under the Resource Conservation and Recovery Act. Therefore, the LDRs and the universal treatment standards would not apply.

Again, after successful lead stabilization, the PCB contaminated soil is still fully regulated under TSCA and would be required to be disposed in an appropriately permitted landfill, subject to the landfill's acceptance criteria and operating permit.

Mr. Cody suggested that a stabilization treatment process may be possible to implement without a Corrective Action Management Unit (CAMU) or Temporary Unit (TU) permit if such a treatment process could be conducted entirely within the AOC in enclosed and containerized equipment and tanks. For your information, the planned stabilization treatment methodology is the Maectite process which can be implemented in this manner. However, although Mr. Cody explained the regulatory basis for such a remedial approach, I would request a more formal agency clarification of the regulations with respect to this matter.

As indicated above, we are requesting an interpretation of the existing AOC regulations and policies as they may apply to our proposed remedial approach, and, hopefully, some indication of agency concurrence.

If I can answer any questions, or otherwise assist your review in any way, please contact me directly at 617-630-6550.

Thank you very much for your consideration of this request.

Very truly yours,

GZA GEOENVIRONMENTAL, INC.

MF Co

Michael F. Conway, P.E., LSP
Vice President

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 3, 2000

Mr. Robert W. Curry
Edwards & Angell, LLP
101 Federal Street
Boston, MA 02110-1800

Re: Request for Hazardous Waste Regulation Interpretive Advice

Dear Mr. Curry:

This letter is in response to your correspondence dated September 14, 1999 in which you request EPA's assessment of your client's wastewater treatment sludge. As indicated in your letter, your client had recently acquired a business which includes a wafer manufacturing segment that is represented in process flow diagrams which were included with your letter as attachments. A portion of this manufacturing operation includes an "electroless" plating process. In particular, you ask whether EPA's December 2, 1986 interpretive rule (see 51 F.R. 43350), which clarified that "electroless" plating is specifically exempted from the scope of the F006 hazardous waste listing would also exempt "electroless" plating from the scope of the F007 through the F009 listings. You ask this question since the previous practice at your client's facility was to have the wastewater treatment sludge resulting from these manufacturing operations shipped off-site as a non-hazardous waste and are wondering whether or not these wastes should be considered F-listed hazardous waste.

Our response to your request will be two-fold. We will first address the question of the applicability of the 1986 interpretive rule to your client's electroless plating operations and we will then address the potential applicability of the hazardous waste listings to your clients wastewater treatment sludges.

Please note that the State of Massachusetts, in accordance with Section 3006 of the Resource Conservation and Recovery Act (RCRA), is authorized to administer and enforce the base RCRA program in lieu of the federal program and, in particular, has regulatory authority regarding hazardous waste determinations. Therefore, you should consult with the appropriate state personnel regarding your request.

As indicated above, on December 2, 1986, EPA issued an Interpretive Ruling which clarified that "electroless" plating was specifically exempted from the scope of the F006 hazardous waste listing. This Ruling, however, was silent regarding the applicability of this "exemption" to the F007, F008 and F009 listings. In August of 1989 EPA issued a "RCRA/Superfund Hotline Summary", document number 9432.1989(01), which addressed this issue. That summary indicated that even though the above referenced clarification was specifically written for the F006 listing, an analogous assessment could be made for the F007, F008 and F009 listings. In other words, the solutions and residues resulting from those operations defined in the F007 through F009 listings would not meet the listing criteria if those solutions and residues resulted from *electroless* plating operations. These wastes, however, would still be subject to the hazardous waste regulations if they exhibit any of the characteristics found in 40 CFR Part 261.20 through 261.24.

Included with your letter are process flow diagrams which appear to show the various wafer manufacturing process steps. While it is not entirely clear, it appears as though the wastewaters from these steps are all discharged into the same wastewater treatment system. As indicated above, the solutions and residues resulting from electroless plating operations would not meet the listing criteria, however, at least one of the other manufacturing process steps could be considered electroplating operations, e.g. chemical etching processes. If this is the case, then the sludges resulting from those operations would meet the F006 listing criteria.

In accordance 40 CFR §261.3(a)(2)(iv), commonly referred to as the "mixture rule", any mixture of solid waste with one or more listed hazardous waste which has not been excluded from the regulations is a hazardous waste. Therefore, using the above assumption that all wastewaters are discharged into the same treatment system and that at least one of the other contributing manufacturing process steps could be considered an electroplating operation, and given the applicability of the mixture rule to this situation, all sludges removed from the same treatment system could be considered RCRA hazardous wastes. This is further explained in the attached memo dated September 13, 1999, entitled "Sludges from Wastewater Mixtures", from David Bussard, Director, Hazardous Waste Identification Division in the Office of Solid Waste, and David Nielsen, Director, RCRA Enforcement Division, in the Office of Regulatory Enforcement. In that memo, EPA states that the hazardous waste listings are intended to cover sludges resulting from mixtures of wastewaters from multiple processes.

In summary, it could be concluded that the sludges resulting from your clients wastewater treatment operations do meet the criteria of an F006 waste. However, as indicated above this assumption is based upon the information you have submitted. A further clarification of your clients operations, including more specific engineering diagrams of the facility operations, including descriptions of process unit operations, material inputs, and chemical transformations, would be necessary in order to make a more accurate assessment of the wastes produced.

Should you have any questions regarding the above, please contact Sharon Leitch, of my staff. She may be reached at (617)918-1647.

Sincerely,

Kevin McSweeney, Associate Director of Waste Policy
Office of Ecosystem Protection

enclosure

cc: Ken Rota, EPA RCRA Technical Unit
Jeff Fowley, EPA Office of Regional Council
Steven DeGabriele, MADEP Bureau of Waste Prevention
Jim Miller, MADEP Bureau of Waste Prevention
Stacy Ladner, MEDEP
John Duclos, NHDES
Peter Marshall, VTDEC
Leo Hellested, RIDEM
Dave Sattler, CTDEP

CLEN 9/10/99

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 9 1999

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

Subject: Sludges from Wastewater Mixtures

From: David Bussard, Director
Hazardous Waste Identification Division, Office of Solid Waste

David Nielsen, Director
RCRA Enforcement Division, Office of Regulatory Enforcement

To: Robert Springer, Director
Waste, Pesticides, and Toxics Division, Region V

Recently, regional staff contacted our offices and asked for an agency interpretation of the regulatory status of wastewater treatment sludges that result from the mixture of wastewater that is a precursor to a RCRA hazardous waste sludge with wastewater that is not a precursor to a RCRA hazardous waste sludge. This memorandum provides further clarification of the status of sludges from wastewater mixtures and the effect of the 1994 opinion of the Seventh Circuit in *United States v. Bethlehem Steel Corp.*, 38 F.3d 862, on this issue. This memorandum covers not only the F006 listing at issue in the *Bethlehem Steel* case, but also F012, F019, K001-007, K151, K106, K032, K035, K037, K040, K041, K044, K046, K066, and K084.

It has always been EPA's interpretation that sludges from wastewater mixtures of the type described above are covered by the listing description. When promulgating the wastewater treatment sludge listings, EPA contemplated that the listings applied to sludges that result from mixtures of precursor wastewaters. For example, the F006 listing covers "wastewater treatment sludges from electroplating operations;" the listing is not modified in any way to suggest that it does not apply to sludges derived from combined wastewater streams. In fact, the F006 Listing Background Document describes a variety of sequential electroplating operations that generate rinsewaters/wastewaters. Some, but not all, of these rinsewaters/wastewaters are precursor wastestreams. Facilities with multiple operations routinely mix their wastewaters prior to treatment, and the Agency intended the listings to cover sludges from these mixtures of wastewaters.

The U.S. Court of Appeals for the Seventh Circuit rejected this interpretation in *Bethlehem Steel*. In this case, the court held that the F006 listing did not apply to sludges from combined wastewater streams. The court based its conclusion in part on the fact that "when the EPA intends to include waste mixtures in its listings, it knows how to do so," referring to EPA's amendment of the F001-F005 spent solvent listings to include solvent mixtures. 38 F.3d at 868.

The Agency previously discussed this Court decision in a November 1994 memorandum to the Regions.[1] As indicated in the November 1994 memorandum issued by OECA and OGC, we believe the Seventh Circuit incorrectly interpreted the F006 listing. But the decision is binding only on district courts in the Seventh Circuit; EPA's interpretation that mixed sludges are covered by the listing remains viable outside the Seventh Circuit. In the Seventh Circuit, we rely solely on the mixture rule in finding that sludges from combined wastewaters are also RCRA hazardous wastes under the federal RCRA program.

Sludges from mixed wastewaters are RCRA hazardous wastes under the mixture rule (40 CFR 261.3(a)(2)(iv)), regardless of the Seventh Circuit's interpretation of the scope of the F006 listing. As indicated above, the ruling in *Bethlehem Steel* held that, if F006 precursor wastewater from electroplating operations is mixed or combined with other wastewater prior to sludge formation, the resulting mixture is not classified as F006 waste. However, the mixture rule was not in effect at the time of that decision. Implicit in the court's decision in *Bethlehem Steel* is the conclusion that if the mixture rule had been in effect at the time of the decision, it would have applied to the treatment sludges from the combined wastewaters. The court specifically stated, "We conclude that the F006 listing does not, *independent of the mixture rule*, include Bethlehem's mixed wastewater treatment sludges." [emphasis added] 38 F.3d at 869. The sludge that is generated from the combined wastewaters is a mixture of a listed hazardous waste and a solid waste.

Because the mixture rule was not then in effect, it did not result in Bethlehem Steel's sludges being RCRA-listed wastes. Bethlehem Steel's sludges had been generated and managed during the period the mixture rule had been vacated under *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). However, the mixture rule was reinstated in March 1992 (57 Fed. Reg. 7628), and thus it would apply to sludge from mixed wastewater generated and managed subsequent to the rule's reinstatement. Mixed sludges generated prior to the March 1992 reinstatement of the mixture rule are still regulated if they have been actively managed since.

It should be noted that only mixed treatment sludges that are separated and removed from the wastewater treatment plant/system are actually covered by the listings, but not the commingled wastewaters themselves. This is reflected in the Office of Solid Waste (OSW) interpretive letters. That is, OSW has clarified that electroplating rinsewaters are not specifically

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[1] Memorandum to Regional Counsel and Waste Management Division Directors from Susan E. O'Keefe, Director, RCRA Enforcement Division, and Lisa K. Friedman, Associate General Counsel, Solid Waste and Emergency Response Division, November 21, 1994 (attached).

listed under 40 CFR 261 Subpart D; once the wastewater treatment sludge precipitates, it meets the listing description of F006 (with the exception of precipitates from rinsewaters from certain excluded electroplating processes). The wastewaters discharged from the treatment plant are nevertheless subject to regulation under the Clean Water Act.

This interpretation of the federal RCRA program should be communicated to the states and to the affected regulated community. We will work with you to more widely disseminate this interpretation to the regulated community. If you have any questions regarding this matter, please call Chichang Chen of OSW at (703) 308-0441 or Mary Andrews of ORE-RED at (202) 564-4011.

cc: Regional Counsel, Regions I - X
Waste Management Division Directors, Regions I - X
RCRA Enforcement Managers, Regions I - X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 3, 2000

Owen E. Boyd, President
SolmeteX
29 Cook Street
Billerica, MA 01821

Re: Second Request for Concurrence of MADEP Exemption

Dear Mr. Boyd:

This letter is in response to your correspondence dated November 4, 1999 in which you submitted additional information to support your request for EPA's concurrence of an exemption granted to your company by MADEP in a letter dated July 7, 1999. We regret to say, however, that as indicated in our previous response to you of September 14, 1999, what you have submitted to us does not contain adequate information in order for us to provide you with any assessment of the applicability of the federal hazardous waste exemptions to your treatment system.

The Hazardous Waste Program of the EPA-New England Office has a formal procedure in place for dealing with requests for what are referred to as "regulatory interpretations". Many of the requests that we receive are for clarifications of various hazardous waste regulations and for determining the applicability of those regulations to various operating scenarios. In order to generate a complete response to these requests EPA must have all of the necessary information. In order to facilitate this process for you we have explained below a summary of the hazardous waste regulations which we believe could be the basis of a request from you.

Nova's perspective, the benefits of demonstrating environmental success by way of the Environmental Indicator checklist would include the reflection of such achievement on EPA's national database and internet web site. This checklist originally was developed for agency use, so parts of it may seem confusing or inapplicable to you. Please contact Raphael Cody at (617) 918-1366 if you need assistance filling out the checklist.

We thank you for your time, the resources you have dedicated so far to cleaning up your facility, and for your cooperation in helping EPA decide how to proceed at your facility. Please call me at (617) 918-1361 or Raphael Cody at (617) 918-1366 with any questions about this letter.

Sincerely,

Matthew R. Hoagland
Chief, RCRA Corrective Action

cc: Mr. Edward Weagle, MADEP
Gary Gosbee, EPA
Catherine Smith, EPA
Raphael Cody, EPA